

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0168 ST
Sales and Use Tax
For The Tax Periods: 1991, 1992, and 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax: Computer Equipment

Authority: IC 6-2.5-2-1, IC 6-2.5-3-2, IC 6-8.1-5-4

Taxpayer protests the assessment of use tax not paid on its purchase of a computer equipment.

II. Sales/Use Tax: Pesticide Cage

Authority: IC 6-8.1-5-4

Taxpayer protests the assessment of use tax on a pesticide cage.

III. Sales/Use tax: Containment Curbing

Authority: IC 6-8.1-5-4

Taxpayer protests the assessment of use tax on its purchase of containment curbing.

IV. Tax Administration: Negligence Penalty

Authority: IC 6-8.1-10-2.1

Taxpayer protests assessment of negligence penalty.

STATEMENT OF FACTS

Taxpayer provides lawn, tree and shrub care services to primarily the residential market.

I. Sales/Use Tax: Computer Equipment

DISCUSSION

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. Use tax is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC 6-2.5-3-2.

Pursuant to IC 6-8.1-5-4(a), every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. Records should include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. During the audit, the auditor did not have sufficient evidence to support taxpayer's contention that sales tax had already been paid on these items. However, taxpayer subsequently submitted sufficient documentation via a letter from the computer supplier to support its protest.

FINDING

Taxpayer's protest is sustained.

II. Sales/Use Tax: Pesticide Cage

DISCUSSION

Taxpayer argues that it paid tax on its purchase of a pesticide cage. Pursuant to IC 6-8.1-5-4(a), every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. Records should include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

During the audit, the auditor did not have sufficient evidence to support taxpayer's contention that sales tax had already been paid on these items. However, taxpayer subsequently submitted sufficient documentation via a copy of invoice to support its protest.

FINDING

Taxpayer's protest is sustained.

III. Sales/Use Tax: Containment Curbing

DISCUSSION

Taxpayer argues that it paid tax on its purchase of containment curbing. Pursuant to IC 6-8.1-5-4(a), every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and

records. Records should include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

During the audit, the auditor did not have sufficient evidence to support taxpayer's contention that sales tax had already been paid on these items. However, taxpayer subsequently submitted sufficient documentation via a copy of invoice to support its protest.

FINDING

Taxpayer's protest is sustained.

IV. Tax Administration: Negligence Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for failure to remit use tax to the Department. Taxpayer argues that this deficiency was due to reasonable cause. The Department finds that the taxpayer had reasonable cause not to remit use tax on these items. Therefore, the negligence penalty does not apply.

FINDING

Taxpayer's protest is sustained.